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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
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10 UNITED STATES OF AMERICA,
11 Plaintiff/Respondent,

11 v.

12 GILBERT PAUL JOHNSON,
13 Defendant/Petitioner.

CRIM CASE NO.12cr1625WQH
CIVIL CASE NO. 19cv974WQH

ORDER

14 HAYES, Judge:

15 This matter comes before the Court is the Petition pursuant to 28 U.S.C. § 2255
16 to vacate sentence filed by the Defendant/Petitioner. (ECF No. 70).

17 **FACTS**

18 On April 2, 2012, Defendant Gilbert Paul Johnson was charged by complaint
19 with importing cocaine into the United States in violation of 21 U.S.C. §§ 952, 960.

20 On April 26, 2012, Defendant waived indictment and was charged by information
21 with importing cocaine and methamphetamine into the United States in violation of 21
22 U.S.C. §§ 952, 960.

23 On May 31, 2012, Defendant pled guilty to the charges in the information.

24 On July 21, 2014, the Court sentenced Defendant to 37 months custody and
25 5 years' supervised release on each count, with the sentences to run concurrently.

26 On July 27, 2015, the United States Probation Office ("USPO") filed a Petition
27 for Warrant or Summons for Offender Under Supervision ("First Petition") alleging that
28 Defendant violated the terms of his supervised release by committing violations of the

1 California Penal Code. In the First Petition, the USPO made two allegations of
2 noncompliance: first, that on or about July 12, 2015, Johnson inflicted injury on his
3 cohabitant in violation of California Penal Code (“PC”) § 273.5; and second, that on or
4 about July 12, 2015, Johnson was a felon in possession of a stun gun in violation of PC
5 § 22610.

6 On August 20, 2015, Defendant admitted to the allegations and the Court
7 sentenced him to 3 months’ custody and 33 months’ supervised release.

8 On September 13, 2016, the USPO filed another Petition for Warrant or
9 Summons for Offender Under Supervision (“Second Petition”) alleging that Defendant
10 violated the terms of his supervised release by committing a violation of the California
11 Penal Code. In the Second Petition, the USPO made one allegation of noncompliance,
12 specifically, that on or about August 20, 2016, Johnson committed assault with a deadly
13 weapon, in violation of PC § 245(a)(1). At the hearing on March 6, 2017, Johnson
14 admitted to the violation alleged in the Second Petition and the Court sentenced him to
15 24 months’ custody on each count, with count 1 to run concurrently to count 2, but both
16 counts to run consecutively to Johnson’s sentence in his state court case. Defendant
17 did not file an appeal of his sentence.

18 On May 22, 2019, Defendant filed a motion to vacate sentence under 28 U.S.C.
19 § 2255 challenging the March 6, 2017 sentence. Defendant asserts that inaccurate
20 information was provided by the California Department of Corrections and
21 Rehabilitation regarding his good time earning rate which influenced the decision of
22 this district court in imposing the sentence for violation of his supervised release.
23 Defendant asserts that this court felt compelled to increase his sentence based on
24 inaccurate information regarding his state sentence.

25 On August 12, 2019, Plaintiff United States filed an opposition to the motion to
26 vacate on the grounds that the motion is procedurally barred and untimely. Plaintiff
27 United States further contends that relief under 28 U.S.C. § 2255 is not available
28 because Defendant fails to identify any constitutional or legal defect in his sentence.

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1 consecutive to the state conviction. The sentence imposed by this Court was not “in
2 violation of the Constitution or laws of the United States.” 28 U.S.C. § 2255.

3 IT IS HEREBY ORDERED that Petition pursuant to 28 U.S.C. § 2255 to vacate
4 sentence filed by the Defendant/Petitioner (ECF No. 70) is denied.

5 DATED: September 17, 2019

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7 **WILLIAM Q. HAYES**
8 United States District Judge
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